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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND	)	Case No. 3:21-cv-6016
PLUMBING, individually and on	)	
behalf of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS OF
	)	THE TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
EXXCEL RANK LLC, and DOES 1	)	§227 ET SEQ.]
through 10, inclusive, and each of	)	2. WILLFUL VIOLATIONS OF THE
them,	)	TELEPHONE CONSUMER
	)	PROTECTION ACT [47 U.S.C.
	)	§227 ET SEQ.]
Defendants.	)	
	)	<b><u>DEMAND FOR JURY TRIAL</u></b>
	)	

Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff”), individually and on behalf of all others similarly situated, allege the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action individually and others similarly situated seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of EXXCELRANK LLC (“Defendant”), in negligently,  
2 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in  
3 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*  
4 (“TCPA”), thereby invading Plaintiff’ privacy.

### 5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
7 a resident of California, seeks relief on behalf of a Class, which will result in at  
8 least one class member belonging to a different state than that of Defendant, a  
9 company with its principal place of business and State of Incorporation in Texas  
10 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of  
11 the TCPA, which, when aggregated among a proposed class in the thousands,  
12 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both  
13 diversity jurisdiction and the damages threshold under the Class Action Fairness  
14 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

15 3. Venue is proper in the United States District Court for the  
16 NORTHERN District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C.  
17 § 1441(a) because Defendant does business within the state of California and  
18 Plaintiff resides within this District.

### 19 **PARTIES**

20 4. Plaintiff, ABANTE ROOTER AND PLUMBING (“Plaintiff”), is a  
21 rooting and plumbing business located in Emeryville, California and is a “person”  
22 as defined by 47 U.S.C. § 153 (39).

23 5. Defendant, EXXCELRANK LLC (“Defendant”), is a digital  
24 marketing company and is a “person” as defined by 47 U.S.C. § 153 (39).

25 6. The above-named Defendant, and its subsidiaries and agents, are  
26 collectively referred to as “Defendants.” The true names and capacities of the  
27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible  
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
3 Complaint to reflect the true names and capacities of the DOE Defendants when  
4 such identities become known.

5 7. Plaintiff is informed and believes that at all relevant times, each and  
6 every Defendant was acting as an agent and/or employee of each of the other  
7 Defendants and was acting within the course and scope of said agency and/or  
8 employment with the full knowledge and consent of each of the other Defendants.  
9 Plaintiff are informed and believe that each of the acts and/or omissions complained  
10 of herein was made known to, and ratified by, each of the other Defendants.

### 11 **FACTUAL ALLEGATIONS**

12 8. Beginning in or around December 2, 2019, Defendant contacted  
13 Plaintiff on its cellular telephones, numbers ending in -6147 and -3803 in an effort  
14 to sell or solicit its services.

15 9. Defendant called Plaintiff once on December 2, 2019, twice on  
16 December 3, 2019, twice on December 4, 2019, once on December 5, 2019, three  
17 times on December 9, 2019, and once on December 12, 2019.

18 10. Defendant's calls constituted calls that were not for emergency  
19 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

20 11. Defendant's calls were placed to telephone number assigned to a  
21 cellular telephone service for which Plaintiff incur a charge for incoming calls  
22 pursuant to 47 U.S.C. § 227(b)(1).

23 12. Plaintiff is not a customer of Defendant's services and has never  
24 provided any personal information, including its cellular telephone numbers, to  
25 Defendant for any purpose whatsoever. In addition, Plaintiff told Defendant at  
26 least once to stop contacting them and Plaintiff has been registered on the Do-Not-  
27 Call Registry for at least thirty (30) days prior to Defendant contacting it.  
28 Accordingly, Defendant never received Plaintiff "prior express consent" to receive

1 calls using an automatic telephone dialing system or an artificial or prerecorded  
2 voice on their cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

3 **CLASS ALLEGATIONS**

4 13. Plaintiff bring this action on behalf of itself and all others similarly  
5 situated, as a member of the proposed class (hereafter “The Class”) defined as  
6 follows:

7  
8 All persons within the United States who received any  
9 telephone calls from Defendant to said person’s cellular  
10 telephone made through the use of any automatic  
11 telephone dialing system or an artificial or prerecorded  
12 voice and such person had not previously consented to  
receiving such calls within the four years prior to the  
filing of this Complaint

13  
14 14. Plaintiff represents, and is a member of, The Class, consisting of All  
15 persons within the United States who received any telephone calls from Defendant  
16 to said person’s cellular telephone made through the use of any automatic telephone  
17 dialing system or an artificial or prerecorded voice and such person had not  
18 previously not provided their cellular telephone number to Defendant within the  
four years prior to the filing of this Complaint.

19  
20 15. Defendant, its employees and agents are excluded from The Class.  
21 Plaintiff do not know the number of members in The Class, but believes the Class  
22 members number in the thousands, if not more. Thus, this matter should be  
23 certified as a Class Action to assist in the expeditious litigation of the matter.

24 16. The Class is so numerous that the individual joinder of all of its  
25 members is impractical. While the exact number and identities of The Class  
26 members are unknown to Plaintiff at this time and can only be ascertained through  
27 appropriate discovery, Plaintiff are informed and believe and thereon allege that  
28 The Class includes thousands of members. Plaintiff allege that The Class members  
may be ascertained by the records maintained by Defendant.

1           17. Plaintiff and members of The Class were harmed by the acts of  
2 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
3 and Class members via their cellular telephones thereby causing Plaintiff and Class  
4 members to incur certain charges or reduced telephone time for which Plaintiff and  
5 Class members had previously paid by having to retrieve or administer messages  
6 left by Defendant during those illegal calls, and invading the privacy of said  
7 Plaintiff and Class members.

8           18. Common questions of fact and law exist as to all members of The  
9 Class which predominate over any questions affecting only individual members of  
10 The Class. These common legal and factual questions, which do not vary between  
11 Class members, and which may be determined without reference to the individual  
12 circumstances of any Class members, include, but are not limited to, the following:

- 13
- 14           a. Whether, within the four years prior to the filing of this  
15 Complaint, Defendant made any call (other than a call made for  
16 emergency purposes or made with the prior express consent of  
17 the called party) to a Class member using any automatic  
18 telephone dialing system or any artificial or prerecorded voice  
19 to any telephone number assigned to a cellular telephone  
20 service;  
21           b. Whether Plaintiff and the Class members were damages  
22 thereby, and the extent of damages for such violation; and  
23           c. Whether Defendant should be enjoined from engaging in such  
24 conduct in the future.

25           19. As a person that received numerous calls from Defendant using an  
26 automatic telephone dialing system or an artificial or prerecorded voice, without  
27 Plaintiff's prior express consent, Plaintiff are asserting claims that are typical of The  
28 Class.

          20. Plaintiff will fairly and adequately protect the interests of the members  
of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
class actions.

21. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

22. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

23. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the California Class as a whole.

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.**

24. Plaintiff repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et

1 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory  
2 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

3 27. Plaintiff and the Class members are also entitled to and seek  
4 injunctive relief prohibiting such conduct in the future.

5  
6 **SECOND CAUSE OF ACTION**

7 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**  
8 **47 U.S.C. §227 et seq.**

9 28. Plaintiff repeat and incorporate by reference into this cause of action  
10 the allegations set forth above at Paragraphs 1-23.

11 29. The foregoing acts and omissions of Defendant constitute numerous  
12 and multiple knowing and/or willful violations of the TCPA, including but not  
13 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et*  
14 *seq.*

15 30. As a result of Defendant's knowing and/or willful violations of 47  
16 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of  
17 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
18 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 31. Plaintiff and the Class members are also entitled to and seek  
20 injunctive relief prohibiting such conduct in the future.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**  
25 **47 U.S.C. §227 et seq.**

- 26 • As a result of Defendant's negligent violations of 47 U.S.C.  
27 §227(b)(1), Plaintiff and the Class members are entitled to and  
28 request \$500 in statutory damages, for each and every violation,  
pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act  
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 4<sup>th</sup> Day of August, 2021.

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By: s/ Todd M. Friedman  
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